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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

NO. _____

HERMOINE P. RICE,
Petitioner

v.

LILLIAN P. RICE,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

DANIEL D. MORGAN,
Counsel for Petitioner.

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OCTOBER TERM, 1947

NO.

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v.

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

MAY IT PLEASE THE COURT:

Your petitioner respectfully shows:

Summary Statement of the Matter Involved

The respondent and Herbert N. Rice, the decedent, were married in 1921 and lived together in and around New Haven, Connecticut, until September, 1942, when the decedent discontinued his automobile business and obtained wartime employment in Springfield, Massachusetts. After consulting a Springfield

attorney concerning a divorce, the decedent left for Reno, Nevada with the declared intention of remaining there permanently, arriving there on March 23, 1944. On May 5, 1944, the decedent instituted suit for divorce in The Second Judicial District Court of the State of Nevada, in and for the County of Washoe, personal service thereof being made on the respondent in Woodbridge, Connecticut, on May 12, 1944. On June 13, 1944, said Court entered a decree of divorce dissolving the marriage between the decedent and the respondent, the jurisdictional basis for such decree being founded on the fact that the decedent testified that from the time he arrived in Nevada he intended to remain there for an indefinite time. The petitioner arrived in Reno, Nevada, on July 3, 1944, and she and the decedent were married on that day.

On July 15, 1944, the petitioner and the decedent went to Herlong, California, where both had obtained wartime employment at the Sierra Ordnance Depot. They were so employed and were living in government quarters provided them there on December 23, 1944, the date of the decedent's death.

To determine the widowhood status of the parties and questions concerning the inheritance of the property of the decedent, who died intestate, the respondent brought an action in the Superior Court of Connecticut for New Haven County seeking a judgment declaring herself to be the widow of the decedent and declaring the Nevada divorce to be a colorable one. From a judgment in favor of the respondent the petitioner appealed to the Supreme Court of Errors of the State of Connecticut, which held that there was no error (R. p. 184).

Statement as to Jurisdiction

This Court has jurisdiction to review the decision of the Supreme Court of Errors of the State of Connecticut under and by virtue of §237 (b) of the Judicial Code (28 U. S. C. A. §344 (b)) in that a right under the Constitution of the United States was specially claimed by the petitioner.

The respondent alleged in paragraph 9 of the complaint that the decedent's residence in Nevada was colorable only (R. p. 3), which allegation was denied by the petitioner (R. p. 4). The respondent claimed a judgment declaring the Nevada divorce to be a colorable one and one which did not dissolve the marriage between the decedent and the respondent (R. pp. 3-4). The trial record was referred to a State Referee (R. p. 6), due to the death of the trial judge (R. p. 5), and paragraph 10 of the report of the Referee states that the Referee found that Reno was not the bona fide domicil of the decedent (R. p. 9). The petitioner remonstrated to this paragraph on the ground that such fact was found without evidence (R. p. 15). The judgment on the report declared the divorce to be a colorable one (R. p. 43).

Under the decision of this Court in *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, the above proceedings, being confined to the jurisdictional basis of the Nevada court for granting the divorce decree, indicate that the full faith and credit to be accorded the Nevada decree, under Article IV, §1, of the Constitution of the United States, was the principal issue in the case. This issue was the one raised on appeal to the Supreme Court of Errors of the State of Connecticut in the petitioner's brief in that Court, and this was the principal issue considered in the opinion of that Court (R. p. 185); hence the materiality of the decision of that Court on this Federal question is clear.

That the decision substantially affects the parties is demonstrated by the fact that, in addition to a determination of the widowhood status of each, the right of each to inherit the property of the decedent is involved.

Although the decree of the Nevada Court was not proved in accordance with the provisions of Rev. Stat. §905, 28 U. S. C. A. §687, the decree was alleged by the respondent and admitted by the petitioner (R. pp. 3-4), a transcript of the proceedings had in the Nevada court was admitted in evidence (R. pp. 47-51) and the Supreme Court of Errors considered the decree in the light of

Article IV, §1, of the Constitution of the United States (R. p. 185) as if it had been properly pleaded; hence, jurisdiction of this Court should not be denied on that ground. *Milliken v. Meyer*, 311 U. S. 457, 461, 61 S. Ct. 339, 342, n. 8.

The Supreme Court of Errors of the State of Connecticut is the highest court of that State and there are no further proceedings available to the petitioner in that State. The judgment of that Court was rendered on March 31, 1948 (R. p. 192).

Questions Presented

In determining whether or not the Connecticut Supreme Court, in affirming the judgment of the trial court, accorded full faith and credit to the Nevada decree this Court must consider certain subsidiary questions:

1. Was the duty of respect owed the Nevada decree fairly discharged by the Connecticut courts?

2. Was such duty evaded by a finding of an absence of domicil in Nevada on the part of the decedent?

3. Is there evidence in the record, or inferences which may reasonably be drawn therefrom, to indicate that the respondent had sustained the burden of undermining the verity of the Nevada decree?

4. Does the record indicate that proper weight was given to the presumption of validity of the Nevada decree and to the finding of domicil implicit therein?

5. Was the finding of domicil adverse to the implied finding thereof in the Nevada decree amply supported by evidence?

Reasons Relied on for Allowance of Writ

In *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, this Court enunciated certain standards by which the adequacy of an attack upon the divorce decree of a sister-State is to be meas-

ured. The respect owed such a decree should not be "evaded under the guise of finding an absence of domicil . . . ." "The burden of undermining the verity which the Nevada decrees import rests heavily upon the assailant." (325 U. S. at 233, 65 S. Ct. at 1097.)

Further, the Nevada decree must not be upset unless the issue of domicil "was left for fair determination by appropriate procedure," and ". . . ." a finding adverse to the necessary foundation for any valid sister-State judgment was *amply supported in evidence*" (325 U. S. at 234, 65 S. Ct. at 1097) (Italics added), and the finding of domicil in the Nevada decree can be overturned only by "relevant standards of proof" (325 U. S. at 236, 65 S. Ct. at 1098).

The petitioner contends that the opinion of the Connecticut Supreme Court (R. pp. 184-191) reveals that the above standards were not properly applied, and that, although the result is in accordance with *Williams* v. *North Carolina*, *supra*, and *Eschwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, those cases should not preclude this Court from granting a review of this case on writ of certiorari. It is claimed that the Supreme Court of Errors of the State of Connecticut has decided a Federal question of substance by improperly applying standards laid down by this Court and has decided it in a way probably not in accord with the decisions of this Court in which those standards are enunciated, nor is the decision in accord with the decisions of the courts of other States that have had occasion to apply those standards.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of Errors of the State of Connecticut, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Court had in the case numbered and entitled on its docket. No. 2693, *Lillian P. Rice* v. *Hermoine P. Rice et al.*, to the end that this cause may be reviewed and determined by this Court as provided for by the

statutes of the United States; and that the judgment herein of said court be reversed by this Court, and for such further relief as to this Court may seem proper.

Respectfully submitted,

HERMOINE P. RICE,
Petitioner.

Dated: June 22, 1948.

By DANIEL D. MORGAN,
Counsel for Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1947

NO.

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LILLIAN P. RICE,
Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of the Court Below

The opinion of the Supreme Court of Errors of the State of Connecticut in this case is reported in 134 Conn. 440 and is set out in the record (R. pp. 184-191).

Jurisdiction

The jurisdiction of this Court is invoked under section 237 (b) of the Judicial Code (28 U. S. C. A. §344 (b)). The Supreme Court of Errors of the State of Connecticut has rendered a final judgment, by deciding there to be no error, on appeal of a case wherein the petitioner specially claimed a right under Article IV, §1, of the Constitution of the United States, which claim was denied by the Connecticut Supreme Court.

Statement of the Case

(In the following recital of the facts no reference to the record is made as to facts included in the Report of the State Referee (R. pp. 6-9). Reference to the Record is made as to all facts not included in said report.)

The petitioner and the decedent, Herbert N. Rice were married in 1921, and from then until September, 1942, lived in and around New Haven, Connecticut. The decedent was engaged in the automobile business in New Haven until June, 1942, when the business was discontinued and most of the equipment sold or leased. In September, 1942, he obtained wartime employment in Springfield, Massachusetts, and lived in that city in a rented room until March, 1944. In February, 1944, the decedent told the petitioner that he had consulted an attorney in Springfield with reference to a divorce, and that the attorney had told him that it would be necessary for him to make his permanent home in Nevada in order to obtain a valid divorce there. He also told the petitioner that he intended to remain in Nevada permanently whether or not he secured a divorce there, but that if he were successful in securing a divorce he would ask the petitioner to marry him (R. pp. 154-155).

In March, 1944, the decedent left for Nevada, arriving in Reno on March 23, 1944. He commenced a divorce action on May 5, 1944, in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, personal service of said action being made on the respondent in Woodbridge, Connecticut, on May 12, 1944. On June 13, 1944, a decree was entered in that Court granting him a divorce from the respondent. He notified the petitioner of the decree, and she came to Reno, arriving there on July 3, 1944. On that same day the decedent and the petitioner were married.

Before the decree was granted, the decedent consulted his Nevada attorney with reference to the effect of his taking a wartime job in Herlong, California, upon his Nevada residence, as

he wanted to maintain such residence. The Nevada attorney explained to the decedent that it would be "all right" for him to take such a job (R. pp. 53-54).

On July 15, 1944, the decedent and the petitioner went to Herlong, California, where they both had obtained wartime employment at the Sierra Ordnance Depot, of which the town of Herlong entirely consisted (R. p. 159), although the decedent continued to pay rent on the room he had rented when he had first come to Reno. The two had opened a joint bank account in Reno on July 14, 1944.

After they went to Herlong, the decedent and the petitioner continued to occupy the room in Reno on weekends. In September, 1944, the petitioner sent for furniture that she had stored in New Haven, Connecticut, and used it to furnish the quarters that were provided for them at the Sierra Ordnance Depot (R. p. 161). In October, 1944, they attempted to register as voters in Nevada, but could not do so because they had not resided in the State for one year.

The decedent and the petitioner were working at the Sierra Ordnance Depot and living in their quarters there at the time of the decedent's death, December 23, 1944.

Errors Relied Upon

The Supreme Court of Errors of the State of Connecticut erred in allowing remote and irrelevant evidence to overturn the Nevada decree. The court erred in requiring that proof of abandonment of a former domicil be a necessary element in the proof of a change of domicil. The court erred in holding that the judgment of the Superior Court could not be reversed unless the facts showed *as a matter of law* that the decedent was domiciled in Reno, thereby reviewing the case as if the burden of establishing the validity of the Nevada decree were on the petitioner. The court further erred in allowing the statement that the decedent went to Reno for the sole purpose of obtaining a divorce to stand as an unreviewable finding of fact.

ARGUMENT

Summary

In the following argument it is contended that an analysis of the proceedings had in the trial of the action indicates that what evidence there was in support of the ultimate finding of fact and the judgment was remote and irrelevant, and that the Court gave undue weight to such evidence; it is also contended that the opinion of the Court reveals that the presumption of validity of the Nevada decree was improperly countered by another presumption, the effect of which was to cast the burden of proof upon the petitioner.

I. The finding that the decedent had no bona fide domicil in Reno was not amply supported in evidence.

In the following cases involving *ex parte* divorces rendered against non-appearing spouses, the courts of some States have had occasion to apply the principles set out by this Court, as in *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207, and *Williams* v. *North Carolina*, 325 U. S. 226, 65 S. Ct. 1092. In *Hall* v. *Hall*, 199 Miss. 478, 24 So. 2nd 347, the husband, a doctor, went from Mississippi to Nevada, obtained a divorce there and returned to Mississippi immediately, resuming his medical practice upon his return. The Court held the Nevada divorce to be invalid. In *Hollander* v. *Hollander*, 137 N. J. Eq. 70, 42 A. 2nd 648, where the husband left New Jersey, obtained a divorce in Arkansas, and returned to New Jersey to live, the court held the divorce to be invalid, as it did in *Cox* v. *Cox*, 137 N. J. Eq. 241, 44 A. 2nd 92, in which latter case the husband utilized an extension on his regular vacation from his position as a school principal to satisfy the Nevada residence requirement and resumed his position as principal upon his return from obtaining a Nevada divorce.

Florida divorces were held to be invalid in *White* v. *White*, 80 U. S. App. D. C. 156, 150 F. 2nd 157, *Commonwealth* v. *Berfield*,

160 Pa. Super. 438, 51 A. 2nd 523, and *Kurski* v. *Kurski*, 185 Misc. 97, 55 N. Y. Supp. 2nd 748. In all three cases the husband had gone to Florida, obtained a divorce and returned to the state of his former domicil. In the *White* case, *supra*, the court held the divorce to be invalid as the facts indicated that ". . . said defendant went to the state of Florida solely for the purpose of obtaining a divorce, and with no bona fide intention of remaining in said state permanently or indefinitely." (150 F. 2nd at 157). In the *Berfield* case, *supra*, the court held that the husband had not established a domicil in Florida, where he stayed there only the necessary three months before filing his divorce action and remained there for a few months after the decree because of profitable war work and not because of domiciliary intent. In the *Kurski* case, *supra*, the husband returned to his former state six days after the entry of the divorce decree and resumed his former job without having resigned his membership in a New York labor union.

In *Reed* v. *State*, 148 Tex. Crim. 489, 187 S. W. 2nd 660, the verdict of guilty in a trial for bigamy was upheld where it appeared that the accused had been domiciled in Texas both before and after obtaining an Oklahoma divorce.

A common characteristic of all the above cases is the fact that the party who obtained the sister-State divorce returned soon thereafter to the state of his former domicil. That does not mean that the application of the decision of this Court in the *Williams* cases, *supra*, should be confined to that situation. However, it does indicate what the courts of the States involved consider to be evidence sufficient to upset the validity of the decree of the sister-State.

Considering the factual situation of the above cases, and the factual situation in *Esenwein* v. *Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, it is possible to predict that a divorce would be held invalid if the facts of the specific case coincide reasonably well with the following facts:

A, being domiciled in State X, goes to State Y and obtains a divorce. A then goes to another state, generally X, to live and make his home.

However, if A, instead of moving to another state after the divorce, remained in State Y, the result would generally be to hold the divorce valid. In *Dalton* v. *Dalton*, 270 App. Div. 269, 59 N. Y. Supp. 2nd 68, the couple lived in New York for 13 years. They were separated in 1938, and the husband went to Illinois. After living in Illinois for four years he went to Washington, D. C., as a government employee. He obtained a default divorce in Illinois which was held to be valid in New York, the Court deciding that the above facts supported the jurisdiction of the Illinois court, and that the government work in Washington did not operate to change the husband's domicil.

The particular point during the stay in State Y at which the divorce is commenced does not seem to be crucial. In *Baldwin* v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670, the husband left California and arrived in Reno in July, 1939. A divorce was granted on December 16, 1939. During this period and after the divorce the husband stayed at a hotel and later in two different apartments. At the time of the suit in question he was living in a Reno hotel. The Court held the above facts amounted to sufficient evidence to support the jurisdiction of the Nevada court.

The crucial facts in all the above cases are those which pertain to the actions of the person after he moves to State Y. If he removes to some other state to make his home soon after residing in State Y for the period of time required by the residence requirement, the divorce is invalid. If there is no evidence tending to show his making a home in a state other than State Y, the divorce is valid. Assume that two husbands, the well established domicil of each being Connecticut, went to Reno. Husband A went there solely to get a divorce and to return to Connecticut. Husband B went to remain there and make his home and to get a divorce. Each obtained divorces. Clearly A's divorce is invalid and B's

divorce is valid. However, the facts in each case up to the time of the departure from Connecticut are likely to be essentially similar. Whether or not either or both had grounds for divorce good in Connecticut is immaterial. Whether or not their prior marriages were happy ones is immaterial. Only by considering the acts and statements of each after arriving in Nevada is it possible to determine the validity of the respective divorces.

No over-simplification of the above cases is intended, but merely that the decisive facts of such cases are those pertaining to the time after the divorce, which may or may not be entirely consistent with the facts pertaining to an earlier period. This is certainly the logical approach. The spurious nature of a pre-divorce residence will be revealed, as well as the bona fide nature of a valid residence proven by the subsequent actions of the person who removed to another state and obtained a divorce.

The above method of approach reveals that the Connecticut courts had insufficient cogent evidence upon which to find that the decedent had no bona fide domicil in Reno, and that what evidence there was pertaining to the decedent's actions subsequent to his arrival in Nevada was incorrectly interpreted by those courts.

The sole fact subsequent to the decedent's arrival in Nevada that bears on the finding reached by the State Referee is that the decedent obtained war work in Herlong, California, and used the room in Reno only on week-ends. The Referee's report stated that the decedent "intended to [establish a home in Reno] in the future if he did not like it at Herlong . . . ." (R. p. 9). This apparently disregards the fact that Herlong, California, consisted solely of an Army post (R. p. 159) and that the decedent had stated to his Nevada attorney that he did not intend to lose his Nevada residence by taking the war employment at Herlong, and had been advised by said attorney that his taking such employment would be "all right." (R. pp. 53-54). Taking such a job under the above conditions should not permit an inference that his domicil

was changed to Herlong, nor should it constitute evidence that his domicil was otherwise than Nevada. See *Dalton* v. *Dalton*, 270 App. Div. 269, 272, 59 N. Y. Supp. 2nd 68, 71, and cases cited therein.

The sole remaining evidence pertaining to the period subsequent to the decedent's arrival in Reno consists of his statements, which the State Referee apparently disbelieved. (See Report of State Referee, Par. 9, R. p. 9, also R. p. 191). However, it is a well known rule that a fact may not be found solely on disbelief of statements as to the opposite of such fact. *Walkinshaw* v. *O'Brien*, 130 Conn. 151, 153, 32 A. 2nd 639. In an earlier opinion of *Baldwin* v. *Baldwin*, 28 Cal. 2nd 406, 170 P. 2nd 670, the court said:

> "Nor will a suspicion of fraud in the prosecution of a divorce action by such party in the foreign jurisdiction avail to defeat the foreign decree . . ." *Baldwin* v. *Baldwin*, 163 P. 2nd 54, 56. (Dist. Ct. of App., 2nd Dist. Div. 2, Cal.)

The opinion of the Connecticut Supreme Court also emphasized the apparent disbelief of the decedent's statements as rendering immaterial any misconstruction of the word "indefinitely" by the State Referee (R. p. 191). Certainly that misconstruction under such circumstances would be material. If the State Referee believed that the decedent, from the time he arrived in Reno, intended to remain there indefinitely he should have found that the decedent had a domicil in Nevada. This Court has stated that:

> "The essential fact that raises a change of abode to a change of domicil is the absence of any intention to live elsewhere. Story on *Conflict of Laws*, Sec. 43,—or as Mr. Dicey puts it in his admirable book 'The absence of any present intention of not residing permanently or indefinitely in the new abode.'" *Williams* v. *Oscntum*, 232 U. S. 619, 624, 34 S. Ct. 442.

The extract of the charge to the jury in *Williams v. North Carolina*, 325 U. S. 226, 236, 65 S. Ct. 1092, 1098, which charge was held to be proper, states that domicil is an abode which one takes with a "present intention of making it his home, either permanently or for an indefinite or unlimited length of time." Nevada law requires that the residence in that State must be accompanied by a bona fide intention to make a home in Nevada and to remain there indefinitely. *Lamb v. Lamb*, 57 Nev. 421, 65 P. 2nd 872.

II. The Supreme Court of Errors of the State of Connecticut considered the case as if the burden were on the petitioner to establish the validity of the Nevada decree.

The Court declared (R. p. 189):

> "The burden was on the plaintiff to prove that Rice did not have a domicil in Reno, and that therefore the Nevada court had no jurisdiction. *Williams v. North Carolina*, 325 U. S. 226, 234, 65 S. Ct. 1092, 89 L. Ed. 1577. Since before going there he was domiciled in Connecticut, the law as to change of domicil above recited makes clear that the defendants' attack upon the quoted finding of the referee cannot succeed unless the subordinate facts are sufficient to establish as a matter of law that Rice had acquired a new domicil in Nevada."

The first sentence of the above quotation, of course, correctly declares the rule of this Court. However, the second sentence seems to state just the reverse. In order to determine the implication of that statement it is necessary to review the "above recited" law as to change of domicil. The opinion, (R. pp. 188, 189) contains the following quotations:

> "'To constitute domicil the residence at the place chosen for the domicil must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicil of the person in which he has voluntarily fixed his habitation, not for a mere temporary or

special purpose, but with the present intention of making it his home, unless something shall happen to induce him to adopt some other permanent home.' *Mills* v. *Mills*, 119 Conn. 612, 617, 179 A. 5."

"'When the parties left this State with the intention of never returning, their domicil in Connecticut was not thereby changed.' The former domicil persists until a new one is acquired. *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 Atl. 902 . . .' *Mills* v. *Mills*, *supra*. Therefore 'proof of the acquisition of a new domicil of choice is not complete without evidence of the abandonment of the old.' *Morgan* v. *Morgan*, 103 Conn. 189, 196, 130 A. 254. As we stated in the *McDonald* case, supra, one's intention in departing from his domicil, not to return to it constitutes no abandonment at that time; 'the law does not permit one to abandon, nor recognize an abandonment of a domicil until another has been established . . .'"

The apparent interpretation of these quotations is that the rebuttable presumption of validity of a sister-State decree is counteracted by a presumption that the domicil of a former domiciliary of Connecticut cannot be said to have changed unless the facts show *as a matter of law*, that the domicil has been changed to another state. Whatever the presumption may be with regard to retention of a former domicil, it should not have the effect of destroying the presumption of validity of a sister-State judgment or decree.

The accuracy of the first quotation from *Mills* v. *Mills*, *supra*, as a restatement of the law of change of domicil is not contested here, provided the word "permanently" is interpreted as claimed in Part I of this brief. However, the second quotation from that case, in the light of the facts therein, merely means that leaving a home state does not, of itself, operate to extinguish that domicil. Such a rule is necessary in view of the concept that a person has, at all times, only one domicil, so that, during the transition period from one abode to another, the law regards the person as retaining

his former domicil. Furthermore, *Mills* v. *Mills*, *supra*, was expressly decided under the doctrine of *Haddock* v. *Haddock*, 201 U. S. 562, 26 S. Ct. 525, and Connecticut was held to be the matrimonial domicil of the husband, because he had deserted his Connecticut wife. The retention of matrimonial domicil has no significance now. *Williams* v. *North Carolina*, 317 U. S. 287, 63 S. Ct. 207.

The quotation from *Morgan* v. *Morgan*, *supra*, is interpreted to mean that, if it were established that the decedent (a) changed his residence and (b) intended to make the new residence his home, the further proof of (c) abandonment of his Connecticut domicil would be required. The Connecticut Court had held, prior to *Morgan* v. *Morgan*, *supra*, that the sole conditions for a change of domicil were an actual change of residence and the absence of an intention to remove elsewhere. *Gildersleeve* v. *Gildersleeve*, 88 Conn. 689, 694, 92 A. 684. In the second sentence following the above quotation from the *McDonald* case, *supra*, there appears this statement:

> "Before McDonald could acquire a domicil in Louisville two things were necessary, he must have established a residence there, and while so residing he must have had the intention of making it his home." *McDonald* v. *Hartford Trust Co.*, 104 Conn. 169, 177, 132 A. 902.

It is conceded that no appeal to this Court can be made on the ground that the Connecticut court improperly applied local law. But it is submitted that the Connecticut Supreme Court not only misapplied Connecticut law in deciding that the apparent lack of proof of abandonment required that the facts *as a matter of law* show that the domicil of the decedent was Nevada, thereby, for practical purposes, destroying the presumption of validity of a sister-State decree, but also misapplied Federal law. The second *Williams* case, *supra*, necessarily makes the question of change of domicil a Federal one, and *Williams* v. *Oscutum*, *supra*, states the requirements for change of domicil as interpreted by this Court; such requirements do not include proof of abandonment of a

former domicil. The question of abandonment may be in issue in a particular case, and could be proved by facts which establish the acquisition of a new domicil, but, where not in issue, should not be considered as constituting an element of proof of change of domicil.

That the decedent went to Reno "for the sole purpose of obtaining a divorce" is stated by the State Referee as a subordinate fact (R. p. 7) and referred to by the Connecticut Supreme Court in its opinion (R. pp. 190, 191). Obviously, this is a different way of stating the ultimate fact as found by the Referee (R. p. 9) and should not be used as a basis for such ultimate fact nor as a reason for upholding the ultimate fact.

Conclusion

The opportunity of the trier of the facts to observe the demeanor and vocal inflections of the witnesses was no better than that of this Court. The facts were found and judgment entered and affirmed on the basis of the transcript of testimony and the exhibits. The petitioner contends that the evidence establishes only that the decedent, before making his last two changes of dwelling, consulted his attorney in each instance, and that such evidence falls far short of that necessary to overcome the presumed validity of the decree of the Nevada Court. The question of domicil being so vital to a determination of marital status, the fact that an attorney gives his client advice on the subject should not tinge with suspicion the actions of the client taken in reliance upon that advice.

It is therefore urged that the foregoing Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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